IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 619 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KESHAJI NAVAJI PRAJAPATI

Versus

VIJAY BHARAT TRADING CO

Appearance:

1. Appeal from Order No. 619 of 1998

MR MB GANDHI for Petitioner No. 1

MR NR TANDEL for Respondent No. 1

MR RR MARSHALL for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 25/09/2001

ORAL JUDGEMENT

1. The Appellant is the original defendant No.2. He has challenged in this Appeal the impugned order dated 7.12.1998 passed by the learned Chamber Judge, Court

No.24, City Civil Court, Ahmedabad, below Ex.6, in Civil Suit No.1745 of 1998, whereby the learned Judge allowed the Application Ex.6 and confirmed the ex-parte order dated 9.4.1998 passed in favour of the plaintiff till the final disposal of the Suit. While doing so, the learned Judge permitted the Municipal Commissioner to issue show cause notice to the plaintiff for starting the business without obtaining the permission and take necessary action after giving an opportunity of hearing to all the concerned parties after making necessary enquiry and taking necessary steps, if any.

2. Initially the Notice was ordered to be issued on this Appeal making it returnable on 20th January 1999 and later on after hearing the learned Counsel for the parties the Appeal was admitted on 28th January 1999.

3. Similarly the Notice was ordered to be issued on 21st December 1998 on Civil Application No.12040 of 1998 making it returnable on 28th January 1999. The said Civil Application was finally disposed of by the learned Single Judge of this Court by a speaking order dated 28th January 1999 after hearing the learned Counsel for the parties. The learned Single Judge stayed the operation and implementation of the impugned order passed by the learned trial Judge till the final disposal of this Appeal.

4. While allowing the Civil Application No.12040 of 1998 the learned Single Judge found that admittedly the first opponent - plaintiff does not have a licence and/or permission to run the establishment. Under Section 313 of the B.P.M.C. Act no person shall run a factory, workplace or workshop in which power in the form of steam, water, electricity or other mechanical power is utilized except with the written permission of the Commissioner.

5. Learned Single Judge also held that the trial Court misdirected itself in its approach and perspective to the entire controversy while passing the impugned order. Thus, on facts and circumstances of the case the learned Single Judge was of the opinion that there was no justification for permitting the plaintiff's illegal business to continue, at least under the protection of interim order of the Court, particularly when the Corporation has already initiated proceeding which is at the stage of passing the order u/s.478(2) of the BPMC Act.

6. Thus, in my considered opinion this Appeal has to

be allowed in terms of the order passed by the learned Single Judge in Civil Application No.12040 of 1998. Accordingly, this Appeal is allowed. The impugned order dated 7.12.1998 passed by the learned trial Judge below Ex.6 in Civil Suit No.1745 of 1998 is hereby quashed and set aside in terms of the order dated 28.1.1999 passed by the learned Single Judge of this Court in Civil Application No.12040 of 1998 and the learned trial Judge is directed to decide the Civil Suit No.1745 of 1998 as early as possible and not later than 30th September 2002 provided the parties fully co-operate with final disposal of the matter.

sd/-

Date : September 25, 2001 (B.J.Shethna, J.)

sas